

REMARKS

A. BACKGROUND

The present Amendment is in response to the Office Action mailed March 30, 2010. Claims 1, 3, 5, 6, 10-14, 16-18, and 20-23 were pending and rejected in view of cited art. Claims 1, 12, and 20 are amended. Claims 1, 3, 5, 6, 10-14, 16-18, and 20-23 remain pending in view of the above amendments, with claims 1, 12, and 20 being independent.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, are consistent with the Examiner's understanding.

B. EXAMINER'S INTERVIEW

Applicant's express their appreciation to the Examiner for conducting an interview with Applicant's representative on July 13, 2010. The substance of the interview is included in this response.

C. PRIOR ART REJECTIONS

I. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejected claims 1, 3, 5, 6, 10-14, 16-18, and 20-23 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,063,710 (*Takamoto*) in view of U.S. Patent No. 5,584,842 (*Fogarty*). Applicant respectfully traverses the Examiner's rejection for obviousness on the grounds that the references – either individually or in combination – fail to teach or suggest each and every element of the rejected claims.

Applicant respectfully submits that the independent claims as presented for reconsideration are not anticipated nor made obvious by *Takamoto* either singly or in

combination with *Fogarty* or any other cited reference of record.¹ In particular, *Takamoto* was cited as disclosing “a suturing device comprising: a housing having a proximal and a distal end (see fig. 1); a needle actuation handle . . .; a shaft (1) at partially disposed within a portion of the housing; a movable handle . . .; and a needle movable within a needle lumen” (Office Action, p. 2). *Takamoto* neither teaches nor suggests the inclusion of a cutting blade with associated blade guard and “opening disposed toward the distal end.” *Fogarty* was cited for the proposition that it teaches “a device with a common opening disposed toward the distal end, a blade guard partially extending over the opening, and a stationary suture cutting blade positioned within the opening and beneath the blade guard (fig. 14f)” (Office Action, p. 3). The cutting blade of *Fogarty* extends proximally from the distal cutting head. This cutting blade “is flat and has a shape similar to that of a blade of a scythe, except that its free end 437 is rounded and is at least partially blunt” (col. 17, ll. 28-30). A back of the blade is dull, with no blade guard extending over the blade (see Fig. 14F). Furthermore, “[t]he sharpened edge 433 [of the blade] extends proximally from the deepest part of the blade recess” (col. 17, ll. 41-42).

Notwithstanding the above, *Fogarty* does not otherwise add anything in terms of reading on the independent claims 1, 12, and 20 as amended and presented herein. For instance, independent claims 1 and 12 recite, in part, “a housing having a proximal end, a distal end, *a hollow body*, an opening disposed toward the distal end, and *a blade guard partially extending over the opening from a proximal end toward a distal end of the opening and terminating proximal the distal end of the opening . . . the stationary suture cutting blade extending distally toward the distal end of the housing and having a cutting edge facing toward the distal end of the housing*”, while independent claim 20 recites, in part, “a stationary suture cutting blade positioned *on the housing and extending within the opening and the interior space* [of the housing], the stationary suture cutting blade being *recessed within and beneath the blade guard*, the stationary suture cutting blade having a *V-shaped cutting edge having one cutting edge orientated relative to another cutting edge in a V-shaped orientation.*” *Fogarty* neither teaches nor suggests the inclusion of a blade guard because it does not include one, but rather includes a dull back. Furthermore, the blade of *Fogarty* extends proximally rather than distally as recited in

¹ Any amendments to claims other than those which are expressly relied upon in overcoming the rejections on art have been made simply to insure consistency in claim language, to correct typographical or grammatical errors, or to correct other errors of a formal, non-substantive nature, but not to otherwise narrow the claims in scope for any reason.

independent claims 1 and 12, and does not extend "within . . . the hollow body" (claims 1 and 12) or "interior space" of the housing (claim 20), and does not include the "V-shaped orientation" as claimed in independent claim 20. Thus, even assuming *arguendo* that *Fogarty* is properly combinable with *Takamoto*, such combination would still fail to teach or suggest the inventions claimed in independent claims 1, 12, and 20 as amended and presented herein.

Accordingly, for at least the reasons noted, independent claims 1, 12, and 20 and the claims depending therefrom² are neither anticipated nor made obvious by *Takamoto*, either singly or in combination with *Fogarty* or any other cited prior art of record, and thus reconsideration and withdrawal of the rejection under Section 103 is respectfully requested.

D. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

² Emphasis herein of the differences between the independent claims and the prior art are equally applicable to the dependent claims 3, 5, 6, 10, 11, 13, 14, 16-18, and 21-23, but this does not mean, on the other hand, that these are necessarily the only differences between the claimed invention and the prior art of record. Applicant thus does not acquiesce in any asserted rejections of the dependent claims 3, 5, 6, 10, 11, 13, 14, 16-18, and 21-23.

Application No. 10/660,288
Amendment "I" dated July 30, 2010
Reply to Office Action mailed March 30, 2010

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 30th day of July, 2010.

Respectfully submitted,

/Paul N. Taylor, Reg.# 57271/
PAUL N. TAYLOR
Registration No. 57,271
Attorney for Applicant
Customer No. 57360
Telephone No. 801.533.9800

FDR:kdj
2826536_1.DOC